

Remarks

Claims 1-16 were pending in this application. Claims 1-4, 6, 7, 9 and 16 have been rejected and claims 5, 8 and 10-15 have been objected to. By way of this amendment, claims 1 and 5-16 have been amended to more fully claim the subject invention and claims 2-4 have been canceled. Support for the claims amendments and new claims can be found in the originally filed specification, claims and Figures. *No new matter has been added.*

The foregoing amendments were made solely in an effort to expedite prosecution and allowance of the present application. The applicants reserve the right to pursue the claims as originally filed in this or a separate application(s).

Accordingly, upon the entry of the present amendment and response, claims 1 and 5-16 will remain pending.

Indefiniteness Rejection Under 35 USC § 112, Second Paragraph

Claims 6 and 7 have been rejected under 35 USC § 112, second paragraph, as allegedly being indefinite for lacking antecedent basis for the term “said reception head.” (See page 2 of the Office Action mailed 9/28/07).

Claim 1 now includes the antecedent basis for “said reception head,” thereby obviating this rejection.

Obviousness Rejection Under 35 USC § 103(a)

Claims 1-4 have been rejected as allegedly being obvious under 35 USC §103(a) as being obvious over U.S. Patent No. 5,092,988 in the name of Womack *et al.* (hereinafter referred to as “*Womack*”) in view of U.S. Patent No. 5,172,332 in the name of Hungerford *et al.* (hereinafter referred to as “*Hungerford*”). Specifically, the Office has cited *Womack* for the proposition that it “discloses system or device for draining liquid from separation vessel 30 that is pumped by suction inducing pump 20, there is disclosed a weight sensor 50 coupled to a data processing and signaling device 60, the weight sensor mounts a drainage collection vessel 42 that also functions as a support to mount inlet pipe 41 thereto that is coupled to or supports membrane filter 40/41.” The Office further states that “[t]he weight sensor, membrane filter and suction pump are all supportedly connected by the various conduits 41, 35 and 23.” (See page 3 of the Office Action mailed 9/28/07).

The Office takes the position that “[t]he claims differ in requiring the data processing means to be coupled to a user interface and a controller that is operable for controlling from weight signals, operation of the suction pump.” *Id.* The Office further

appears to rely on *Hungerford* as allegedly teaching “a liquid sampling system having a plurality of sensors, with the output signals from such sensors controlling multiple operations of sampling, including sample pumps and valves (column 4, lines 2-22).” *Id.*

The Office then goes on to state that “[i]t would have been obvious to one of ordinary skill in the art to have expanded the Womack et al system/device to incorporate such user interface and controller. . . . Another advantage of the Hungerford controller is to allow adjustable determination of sample times so as to more accurately quantitatively determine levels of contaminants, water quality and water flow rates from the water source being sampled (see column 3, line 66-column 4, line 3, and column 4, lines 34-42 of Hungerford).” (See pages 3 and 4 of the Office Action mailed 9/28/07).

Applicants respectfully traverse this rejection for the following reasons.

A proper *prima facie* obviousness rejection requires that there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Additionally, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See M.P.E.P. §2143. Also, see *In re Vaeck*, 947 F.2d 488, 493, 20 U.S.P.Q.2d 1438, 1443 (Fed. Cir. 1991) (the teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, not in applicant’s disclosure).

Additionally, as set forth in the guidelines put forth by the United States Patent and Trademark Office, a legal conclusion of obviousness must be supported by “[s]ome teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art references or to combine prior art reference teachings to arrive at the claimed invention.” (See, column 1, at page 57529 of the Fed. Reg. Vol. 72, No. 195 (Oct. 10, 2007)).

Applying the aforementioned precedent to the instant case, Applicants note that not only do each of *Womack* and *Hungerford* fail to teach or suggest, either alone or in combination, each and every limitation of the claimed invention, but there is no teaching, suggestion or motivation in any of these references to combine or modify their teachings to arrive at the claimed invention.

As an initial matter, Applicants note that *Womack*, the primary reference cited by the Office, fails to teach several limitations of the claimed invention, as set forth in claim 1.

Claim 1 is directed to **a drainage device for a filter unit** for microbiological testing of liquids, where the drainage device comprises: (a) **a mechanical support** adapted to receive a filter unit including a membrane and an suction pump connected to said mechanical support to aspirate a liquid substance contained in said filter unit; (b) **a weight sensor** on which said mechanical support is mounted and which is adapted to

deliver a signal representative of the weight exerted by said mechanical support on said weight sensor; (c) **a user interface** for entering data relating to the drainage of said filter unit and/or to said liquid substance; and (d) **a control unit** connected to said suction pump, the weight sensor and said user interface, said control unit being adapted to determine, from said data, at least a first weight corresponding to a first representative signal; and in that, when said weight sensor supplies a signal corresponding to said first signal, said control unit starts operation of said suction pump so as to aspirate said liquid substance contained in said filter unit.

In contrast, the device set forth in *Womack* is directed to an **apparatus for testing water quality for subsurface injection** that provides for samples of infinite volume to be passed over a membrane filter at a constant pressure. *See Abstract*. It is to be noted that not only is the device of *Womack* designed to perform a completely different function than the claimed device, but the device is also structurally divergent from the claimed device and lacks several structural features set forth in the instant claims.

It appears that the Office has erroneously considered the collection vessel in the apparatus of *Womack* to be analogous to a mechanical support. However, Applicants note that the apparatus of *Womack* does not include **a mechanical support adapted to receive a filter unit including a membrane**, let alone a mechanical support to which a suction pump is connected in order to aspirate a liquid substance contained in the filter unit, as in case of the claimed invention. In contrast, the apparatus of *Womack* includes a filter holder (40) positioned above a collection vessel (42) which rests on an electronic balance (50). *See*, column 7, lines 25-37 and Figure 1. However, as such, the collection vessel of *Womack* is not adapted to receive the filter unit. Instead, the collection vessel is merely positioned below the filter outlet. *See*, Figure 1. Furthermore, there is also no teaching or suggestion in *Womack* of a **suction pump connected to the mechanical support**. In contrast, the only pump in the apparatus of *Womack* (20) is a **positive displacement pump which is connected to the sample coupling** (24). *See*, column 5, lines 37-38 and Figure 1. Accordingly, the collection vessel in the apparatus of *Womack* is not analogous to the mechanical support, as set forth in the claimed invention.

Additionally, as acknowledged by the Office, the apparatus of *Womack* also does not include **a user interface** and **a control unit connected to the suction pump**.

Hungerford fails to cure the deficiencies of *Womack*. It appears that the Office has relied on *Hungerford* as providing the motivation to modify the apparatus of *Womack* to arrive at the claimed device. However, Applicants note that *Hungerford* is even farther removed from the claimed invention. Specifically, *Hungerford* is directed to an **automatic fluid sampling and monitoring apparatus**. *See Abstract*. The apparatus set forth in *Hungerford* appears to have a completely different structure than the device of *Womack* as well as that of the claimed invention. The Office has cited to column 4, lines 2-22 of *Hungerford* as allegedly teaching “a liquid sampling system having plurality of sensors, with the output signals from such sensors controlling multiple operations of sampling, including sample pumps and valves.” *See*, page 3 of the Office Action mailed 9/28/07. However, such a teaching in *Hungerford* is irrelevant to the claimed invention.

For example, as discussed above, the apparatus of *Hungerford* is both structurally as well as functionally different than both the apparatus of *Womack* as well as that of the claimed device. Accordingly, as such, one of ordinary skill in the art would not have combined the teachings of *Hungerford* with those of *Womack* or have looked to *Hungerford* as providing the motivation to modify the apparatus of *Womack*.

Furthermore, even if *arguendo*, one of ordinary skill in the art would have been motivated to combine the teachings of *Womack* and *Hungerford*, one of ordinary skill in the art would not have arrived at the device of the claimed invention, as none of *Womack* and *Hungerford*, alone or in combination, would have taught each and every limitation of the claimed invention. For example, none of *Hungerford* and *Womack* teach a mechanical support, as set forth in claim 1.

Nonetheless, without acquiescing to the validity of this rejection and solely in an effort to expedite prosecution and allowance of the pending claims, claim 1 has been amended to recite a mechanical support comprising a reception head. As such, none of *Womack* or *Hungerford*, teach or suggest, alone or in combination, a mechanical support, let alone a mechanical support comprising a reception head for receiving a filter unit.

In view of the foregoing amendment and arguments, Applicants respectfully request reconsideration and withdrawal of this rejection.

Conclusion

In view of the foregoing amendments and arguments, allowance of the instant application with all pending claims is respectfully solicited. If a telephonic conversation with Applicants' attorney would help expedite the prosecution of the above-identified application, the Examiner is urged to call the undersigned at the number below. Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account no. 13-3577.

Respectfully submitted



Sapna Mehtani, Ph.D., J.D.
Attorney for Applicants
Reg. No. 56,126

December 28, 2007
Millipore Corporation
290 Concord Road
Billerica, Massachusetts 01821
Tel.: (978) 715-1086
Fax: (978) 715-1382